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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ABEL ROCHA,

Defendant and Appellant.

2d Crim. No. B239557
(Super. Ct. No. 2011025313)
(Ventura County)

Abel Rocha appeals a judgment following his conviction of possession of cocaine base for sale and unlawful possession of a firearm. (Health & Saf. Code, § 11351.5; Pen. Code, § 12021, subd. (a)(1).)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On January 26, 2012, Rocha waived his constitutional rights and pleaded guilty to possession of cocaine base for sale and possession of a firearm by a felon. (Health & Saf. Code, § 11351.5; § 12021, subd. (a)(1).) The crimes occurred on July 14, 2011, when police officers executed a search warrant and discovered an unlawful firearm in Rocha's home and rock cocaine in his clothing.

¹ All further statutory references are to the Penal Code unless stated otherwise. References to section 12021 are to the version in effect prior to repeal effective January 1, 2012.

On February 27, 2012, the trial court suspended imposition of sentence and granted Rocha 36 months of formal probation, with terms and conditions that included 240 days of confinement in county jail. The court also awarded Rocha 25 days of presentence custody credit (17 actual days plus 8 conduct credit days). Rocha objected to the presentence custody credit award, claiming that principles of equal protection required increased credits according to the recent amendments to section 4019. The court denied Rocha's request.

Rocha appeals and asserts that he is entitled to an additional nine days of conduct credit. Specifically, he argues that denial of increased credit violates the constitutional command of equal protection of the law pursuant to the federal and California Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. 1, § 7, subd. (a).)

DISCUSSION

The Legislature has amended section 4019 several times, increasing or decreasing the rate at which prisoners can earn conduct credits. At the time Rocha committed his crimes (July 14, 2011), section 4019 permitted an award of six days deemed served for every four days in actual custody for those prisoners who followed the rules and regulations of confinement. On October 1, 2011, the Legislature amended section 4019 to increase the conduct rate to award four days deemed served for every four days in actual custody. (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 35, pp. 3945-3946, eff. Sept. 21, 2011, operative Oct. 1, 2011.) The Legislature also added subdivision (h) to section 4019, providing: "The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law."

People v. Brown (2012) 54 Cal.4th 314 recently decided that prospective application of a former version of section 4019 allowing increased credits does not violate the equal protection clauses of the federal and California Constitutions. "[T]he important correctional purposes of a statute authorizing incentives for good behavior

[citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Id.* at pp. 328-329.)

Here Rocha committed his crimes nearly three months before the October 1, 2011 effective date of amended section 4019. Constitutional principles of equal protection of the law do not require retroactive application of the October 1, 2011 amendment to him. (*People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9 [declining to find equal protection violation with prospective application of October 1, 2011 amendment].)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Nancy Ayers, Judge
Superior Court County of Ventura

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